

1 Felix A. Seidler CSB 62717
REEVES & SEIDLER
2 2527 Santa Clara Avenue
Alameda, California 94501
3 Telephone: (510) 521-8111
Facsimile: (510) 521-3895
4 E-mail attyseidler@netscape.net

5 Attorney for Creditor/Moving Party
CASTLE COUNTRY INVESTMENTS, LLC
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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 In re:) NO. 09-42975 WJL
12)
KEVIN MICHAEL GILLIKIN,) Chapter 13
13)
14 Debtor.) RS. FAS-030
15) Date: April 4, 2012
16) Time: 9:30 a. m.
Room: 220

17 **AMENDED**

18 MOTION FOR RELIEF FROM AUTOMATIC STAY OR, ALTERNATIVELY,
AN ORDER CONFIRMING NO STAY IS IN EFFECT

19 1. This court has jurisdiction in this proceeding under 28 USC
20 §157(b) and 11 USC §362.

21 2. The moving party, Castle Country, Investments, LLC, a
22 Colorado limited liability company, is the holder of a promissory note
23 executed by debtor in the original principal amount of \$255,000 which
24 is secured by a first deed of trust on the real property at 11068
25 Cragmont Avenue, Berkeley, California. The note provides it was due
26 in full July 1, 2011. The moving party accepted three additional
27 interest payments after the due date resulting in the interest being
28 paid through September 30, 2011. Debtor made no further payments.

1 3. The moving party commenced foreclosure of the deed of trust
2 by non-judicial foreclosure as provided by California law. Civil Code
3 §2924, ff. An order was placed with a title company for a trustee's
4 title report. The title company was requested to record the
5 appropriate Notice of Default which it did February 24, 2012. In the
6 preparation of the title report, the within bankruptcy case was
7 discovered. In addition to the other relief requested herein, the
8 moving party requests the court ratify the issuance and recording of
9 the Notice of Default *nunc pro tunc*.

10 4. This Chapter 13 case was filed April 10, 2009. The first
11 amended Chapter 13 plan was confirmed October 14, 2009 (Docket 23)
12 which included the revesting of the estate property in debtor. The
13 plan was subsequently modified on motion by order entered July 20,
14 2011 (Docket 51 and 55).

15 5. The note the subject of this motion and the deed of trust
16 securing it were made by debtor December 15, 2010. The deed of trust
17 was recorded January 3, 2011, as Document 2011001530, Alameda County
18 Records. As set forth in the declaration of the attorney for the
19 moving party filed herewith, the note was made in contemplation of the
20 purchase of the real property at 1068 Cragmont Avenue, Berkeley.

21 6. No reference to the purchase of the real property or the
22 making of the note is found in any of the bankruptcy documents. The
23 purchase of the Cragmont property and the moving party's note occurred
24 after the confirmation of debtor's plan and were thus post-
25 confirmation and the Cragmont property did not become property of the
26 estate. The plan modification was subsequent to debtor's purchase of
27 the Cragmont property and the note and deed of trust but did not
28 mention or refer to them at all and thus had no effect on the property

1 obtained by debtor post-confirmation. Since the Cragmont property was
2 not acquired by the estate, 11 USC §541(a)(7) has no application.

3 7. The moving party believes the stay in bankruptcy did not
4 affect thoe Cragmont property at all. An order confirming no stay in
5 bankruptcy affects the Cragmont property is appropriate since the
6 Cragmont property is not property of the estate and not affected by 11
7 USC §362(a)(3) and (4).

8 8. Alternatively, debtor has not taken any action to provide the
9 moving party with adequate protection by full payment of his
10 obligation by amending it within his plan. This is in no way feasible
11 in that since such an amendment would require debtor to increase his
12 plan payments by approximately \$14,000 per month for the balance of
13 the plan period. On this basis, the moving party is entitled to
14 relief from stay.

15 REEVES & SEIDLER

16 Dated: March 2, 2012

17 /s/ Felix A. Seidler
18 Felix A. Seidler
19 Attorneys for the Moving Party
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